

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DONALD LECASTRE

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

DATE

03/14/2013

SIGNATURE OF ATTORNEY OF RECORD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

DONALD LECASTRE	:	
	:	CIVIL ACTION
v.	:	
	:	NO.
NCO FINANCIAL SYSTEMS, INC.	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

03/14/2013
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Donald Lecastre
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 307 Wawayanda Ave., Middletown, NY 10940

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 03/14/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/14/2013

Attorney-at-Law

57100

Attorney I.D.#

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **EASTERN DISTRICT OF PENNSYLVANIA**

4 DONALD LECASTRE,)
5)
6 Plaintiff)
7)
7 v.) **Case No.:**
8)
8 NCO FINANCIAL SYSTEMS, INC.,) **COMPLAINT AND DEMAND FOR**
9) **JURY TRIAL**
9 Defendant)
10) **(Unlawful Debt Collection Practices)**

11 **COMPLAINT**

12
13 DONALD LECASTRE (“Plaintiff”), by and through his attorneys,
14 KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL
15 SYSTEMS, INC. (“Defendant”):
16

17
18 **INTRODUCTION**

19 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices
20 Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), which prohibits debt collectors from
21 engaging in abusive, deceptive, and unfair practices.
22
23
24
25

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its principal office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Middletown, New York 10940.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate

1 headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

2 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
3 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a consumer
4 debt of another person.
5

6 10. Defendant acted through its agents, employees, officers, members,
7 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
8 representatives, and insurers.
9

10 11 **FACTUAL ALLEGATIONS**

12 10. At all relevant times, Defendant was contacting Plaintiff in an attempt
13 to collect an alleged consumer debt.
14

15 11. The alleged debt, a TD Bank, N.A. personal banking account
16 overdraft fee, arose out of transactions, which were primarily for personal, family,
17 or household purposes.
18

19 12. By way of background, on or about May 9, 2009, Plaintiff filed a
20 Chapter 7 Voluntary Bankruptcy Petition in the Southern District of New York,
21 Action No. 09-36203-CGM. Plaintiff was represented by counsel.
22

23 13. On the schedule of creditors holding unsecured, non-priority claims,
24 Plaintiff listed TD Bank, N.A., identifying account no. xxxxxx0427 and describing
25 the claim as “overdraft fees.” See Exhibit A, Schedule of Creditors.

1 14. Subsequent to filing the bankruptcy petition, Plaintiff closed his
2 account with TD Bank, N.A.

3 15. Thereafter, on August 11, 2009, Plaintiff was granted a Discharge.
4
5 See Exhibit B, Order of Discharge.

6 16. More than three (3) years after having been granted a discharge,
7 beginning in January 2013, Defendant continuously and repeatedly contacted
8 Plaintiff on his home telephone seeking to collect a debt allegedly owed to TD
9 Bank, N.A. on account number xxxxx0427 for an overdraft fee. See Exhibit C,
10 January 15, 2013, collection letter from Defendant.

11
12 17. Plaintiff disputes owing any debt to TD Bank, N.A., as any debt he
13 owed was discharged in bankruptcy in August 2009.

14
15 18. Since having the debt discharged in Bankruptcy, there have been no
16 other overdraft fees or debts to T.D. Bank, N.A., as he no longer banks there.

17
18 19. On at least one occasion, Plaintiff spoke with Defendant's collectors
19 and disputed owing the debt, explaining that it had been discharged in bankruptcy.
20 Its collectors however, falsely claimed that the overdraft fees comprising he debt
21 were incurred in 2011, which could not have been an accurate representation.

22
23 20. Plaintiff advised that he disputed the debt because it had been
24 discharged in bankruptcy and because he never banked with TD Bank, N.A. after
25 that charge was incurred.

1 21. Upon information and belief, Defendant did not investigate the
2 information provided by Plaintiff, nor update its records to ensure he was no
3 longer being called.
4

5 22. By misrepresenting the character and status of the debt, Defendant
6 engaged in deceptive and misleading behavior.
7

8 23. Defendant had no lawful entitlement to seek payment of a debt
9 discharged in bankruptcy and by doing so anyway, it could only have intended to
10 deceive, annoy, abuse and harass a consumer into paying.
11

12 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**
13 **ACT**
14 **COUNT I**

15 24. Defendant's conduct, as detailed in the preceding paragraphs, violated
16 15 U.S.C. §§1692c(a)(1) and 1692c(a)(2).
17

18 a. A debt collector violates §1692c(a)(1) of the FDCPA by
19 communicating with a consumer at an unusual time or place or a
20 time or place known or which should be known to be inconvenient,
21 and shall assume that the convenient time for communicating with
22 a consumer is after 8:00 a.m. and before 9:00 p.m.
23

24 b. A debt collector violates §1692c(a)(2) of the FDCPA by
25 communicating with a consumer if the debt collector knows the

1 consumer is represented by an attorney with respect to such debt.

2 c. Here, Defendant violated §1692c(a)(1) and 1692c(a)(2) of the
3 FDCPA by communicating with Plaintiff at his home and
4 continuing to contact him after it knew he was represented by an
5 attorney.
6

7
8 **COUNT II**

9 25. Defendant's conduct, as detailed in the preceding paragraphs,
10 violated 15 U.S.C. §§1692d and 1692d(5).

11 a. Section 1692d of the FDCPA prohibits debt collectors from
12 engaging in any conduct the natural consequences of which is to
13 harass, oppress or abuse any person in connection with the
14 collection of a debt.
15

16 b. Section 1692d(5) of the FDCPA prohibits debt collectors from
17 causing a telephone to ring or engaging any person in telephone
18 conversation repeatedly or continuously with the intent to annoy,
19 abuse, or harass any person at the called number.
20

21 c. Defendant violated §§1692d and 1692d(5) of the FDCPA when it
22 called Plaintiff with the intent to annoy, abuse and harass Plaintiff,
23 as it was calling him about a debt that he did not owe a debt.
24
25

COUNT III

26. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e, 1692e(2)(A), 1692e(4), 1692e(5), 1692e(7), and 1692e(8).

a. Section 1692e of the FDCPA prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

b. Section 1692e(2)(A) of the FDCPA prohibits debt collectors from making false representations about the character, amount, or legal status of any debt.

c. Here, Defendant violated §§1692e and 1692e(2)(A) of the FDCPA by attempting to collect a debt that had been discharged in bankruptcy and falsely representing the character, amount and/or status of a debt, as Plaintiff did not owe a debt.

COUNT IV

27. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692f and 1692f(1).

a. Section 1692f of the FDCPA prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt.

b. A debt collector violates §1692f(1) of the FDCPA by collecting an

1 amount (including any interest, fee, charge, or expense incidental
2 to the principal obligation) unless such amount is expressly
3 authorized by the agreement creating the debt or permitted by law.
4

- 5 c. Here, Defendant violated §§1692f and 1692f(1) of the FDCPA by
6 attempting to collect a debt that had been discharged in bankruptcy
7 and by collecting an amount that Plaintiff did not owe.
8

9 WHEREFORE, Plaintiff, DONALD LECASTRE, respectfully prays for a
10 judgment as follows:

- 11 a. All actual damages suffered pursuant to 15 U.S.C.
12 §1692k(a)(1);
13
14 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
15 pursuant to 15 U.S.C. §1692k(a)(2)(A);
16
17 c. All reasonable attorneys' fees, witness fees, court costs and
18 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
19 §1693k(a)(3); and
20
21 d. Any other relief deemed appropriate by this Honorable Court.
22
23
24
25

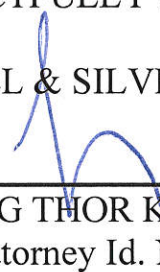
DEMAND FOR JURY TRIAL

1 PLEASE TAKE NOTICE that Plaintiff, DONALD LECASTRE, demands a
2 jury trial in this case.
3

4
5
6 DATED: 03/14/13

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

7
8 By: 
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